

# The Brilliant & Profitable Role of Conservation Easements in Superfund Redevelopment

EPA Superfund Redevelopment

January 28, 2020

BILL

Welcome, everyone!

Thank you all for tuning in to this Superfund Redevelopment webinar. My name is Bill Denman and I am the EPA Region 4 Redevelopment and Chemicals Branch Chief. I am so glad you have joined us today. During today's session, we'll be discussing land conservation easements, focusing on opportunities, benefits, strategies, liability protections and risk management for partnerships between developers, local and state governments, and land trusts. We'll also hear about some sites where conservation easements have made a difference.

# Introduction

Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch

BILL – 5 min total

Superfund Redevelopment hosts redevelopment-focused webinars in order to share site reuse success stories and challenges. Our hope is to inspire more safe and beneficial reuse at blighted sites across the country. Each webinar focuses on a specific topic, providing guidance, tools and lessons learned to support the appropriate reuse of Superfund sites.

Superfund redevelopment would like to learn what more it can do to support redevelopment through national “round tables”, listening sessions and webinars like these geared towards soliciting feedback from local and state governments, developers, site owners and more.

EPA recognizes that Superfund sites present specific challenges for redevelopment and improvements to EPA's support, resources and tools will help to promote reuse and make our collective efforts more effective. Feedback from these feedback sessions across the country will be summarized, and recommendations will be created and shared with EPA leadership.

# Webinar Overview

- **Introduction**

- Speaker: Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch

- **What is Superfund Redevelopment?**

- Speaker: Scott Miller, EPA Region 4

- **The Brilliant & Profitable Role of Conservation Easements in Superfund Site Redevelopment**

- Speakers: Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch
- Kat West, Skeo Solutions
- Alex Size, The Trust for Public Land
- Paolo Perrone, The Trust for Public Land

- **Tools, Support & Resources**

- Speaker: Frank Avvisato

- **Q&A and Roundtable Discussion**

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Here is a preview of what we will be covering today. As I mentioned, our webinar will provide an overview of land conservation easements.

Scott Miller with Region 4 will provide some brief background on SRI.

Then, Kat West with Skeo Solutions; Alex Size and Paolo Perrone with the Trust for Public Lands, and I will share the benefits and examples of the role of conservation easements in Superfund site redevelopment.

Lastly, I will share some final resources and contact information, before our question and answer session with roundtable discussion.

Now, Scott Miller, a Superfund Redevelopment Coordinator for EPA Region 4.

# Superfund Redevelopment

Scott Miller, EPA Region 4

SCOTT MILLER – 5 min total

Thanks Bill – I'm Scott Miller a Superfund Redevelopment Coordinator for EPA Region 4.

Superfund Redevelopment has had an extraordinarily successful 20 years supporting the redevelopment of Superfund sites, with over 900 sites in reuse or continued use.

# Superfund Redevelopment

Working with communities and other partners in considering future use opportunities and integrating appropriate reuse options into the cleanup process



<https://www.epa.gov/superfund-redevelopment-initiative>

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SCOTT MILLER

Superfund Redevelopment has had an extraordinarily successful 20 years supporting the redevelopment of Superfund sites, with over 900 sites in reuse or continued use.

Superfund Redevelopment works with communities and other partners in considering future use opportunities and integrating appropriate reuse options into the cleanup process. It is important to note that reuse considerations can and should be explored at **any point** during the Superfund cleanup process. There are many different ways to reuse Superfund sites, and there is no one-size-fits-all solution to determining which reuse type will be most appropriate. Contaminated sites pose unique challenges in terms of both cleanup and reuse. However, they can also allow for a broad spectrum of safe and productive reuse possibilities.

Returning contaminated sites to productive use is an important part of EPA's mission. For more information about SRI's reuse and redevelopment efforts – I would encourage you to visit the Superfund Redevelopment website. The link to the SRI website is here on the slide and also listed in your resources pod on the right side of your screen.

***Pictured Left: On July 31<sup>st</sup>, 2019, EPA Region 6 held a 20<sup>th</sup> Anniversary celebration at the Tulsa Fuels and Manufacturing Superfund site in Collinsville, OK. As part of the celebration, EPA Region 6 recognized stakeholders with Greenovations Awards for their efforts in reusing the site as habitat for rescued honeybee hives. Once a zinc smelter, the site now is home to a dozen colonies of honey bees. EPA consolidated waste and covered the waste with vegetation. Two local businesses collaborated to raise honey bees on the site. The clover that EPA used to protect the consolidated waste is the ideal food for***

*bees and the perfect ingredient for honey.*

***Pictured Right: On August 2<sup>nd</sup>, 2019, EPA Region 3 held a 20<sup>th</sup> Anniversary celebration at the Croydon TCE Superfund site in Bristol Township, PA. As part of the celebration, EPA Region 3 presented Heritage Conservancy with an Excellence in Site Reuse Award in recognition of their efforts to reuse the site. The preserve is one of the last remaining coastal plain forests in the state. The preserve provides publicly accessible green space in a more developed area of Bucks County. Many mammals, birds, reptiles, and amphibians inhabit the forest, and it also serves as a migratory stop for traveling birds. Heritage Conservancy works closely with the local Little League club and nearby Keystone Elementary School to provide field trips and educational opportunities at the property.***

# Redevelopment Partnerships



Rails-to-Trails Conservancy support at California Gulch Superfund site, Colorado



U.S. Soccer Foundation support at Avtex Fibers Superfund site, Virginia



Academy of Model Aeronautics support at Auburn Road Landfill Superfund site, New Hampshire



The Trust for Public Land support at Pemaco Maywood Superfund site, California



Pollinator Partnership (P2) at Chemical Commodities Inc. Superfund site, Kansas

<https://www.epa.gov/superfund-redevelopment-initiative/redevelopment-partnerships>

## SCOTT MILLER

I encourage you to visit the Redevelopment Partnerships page of the Superfund Redevelopment website to learn more about the specific organizations that have partnered with Superfund Redevelopment to assist in Superfund site reuse. Collaborating with these organizations helps Superfund Redevelopment provide appropriate tools and resources to turn reuse visions and plans into reality.

SRI currently has partnerships with the Academy of Model Aeronautics, the U.S. Soccer Foundation, the Rails to Trails Conservancy, The Trust for Public Land and Pollinator Partnership (P2). These organizations are familiar with Superfund and willing to work with communities, municipalities or other stakeholders to explore reuse opportunities and resources for their local Superfund sites.

With that, Kat West will kick off our discussion of conservation easements.



# The Brilliant & Profitable Role of Conservation Easements in Superfund Redevelopment

Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch

Kat West, Skeo

Alex Size, The Trust for Public Land

Paolo Perrone, The Trust for Public Land

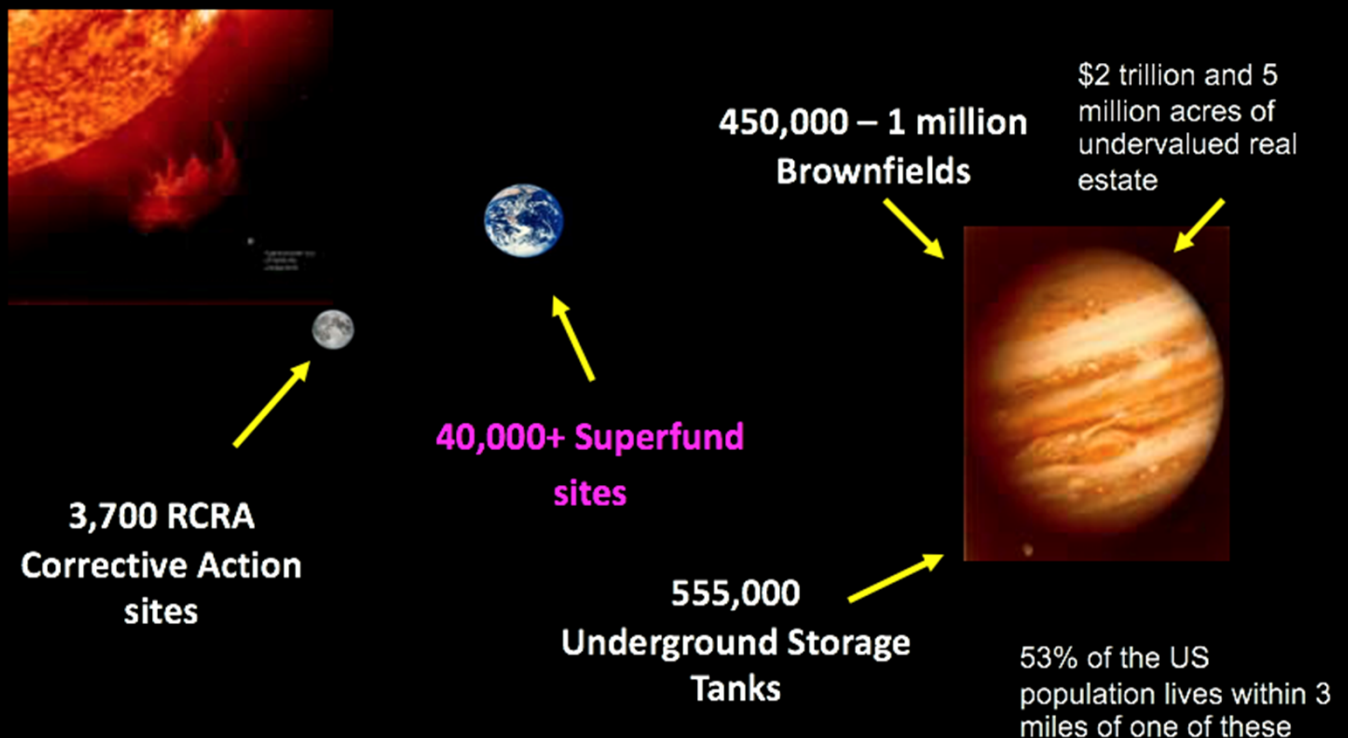
KAT

Wonderful, thanks Scott!

We are really enthused to be talking about the brilliant & profitable role of conservation easements in Superfund and other contaminated property redevelopment!



# Universe of Contaminated Properties



KAT – 5 min total

- And the opportunities are vast! This slide represents the universe of contaminated properties. There are approximately 1 million contaminated properties in the United States that represent up to \$2 trillion and 5 million acres of undervalued real estate. There are 40,000 Superfund sites across the nation, about 1,700 or so of these are on the Superfund National Priorities List.
- And as you may know, remediation of contaminated land often does not mean restoring the land to pristine levels but instead seeks to remove or contain hazardous substances so that the site is protective of human health & the environment for specific and designated purposes based on the intended future use.
- So this is where conservation easements and partnerships between developers, local governments, land trusts, and responsible parties can be critical for maximizing redevelopment profits and benefits to make the deal work or make it work better, and these partnerships can help ensure that properties don't get mothballed with no community benefit after cleanup.
- The good news is that while these types of partnerships and creative strategies are relatively new, they are in demand and growing.
- For example, BASF, the international chemical company, is actively looking for land trust partners for their sites because, as they say, they are in the chemical business, not the land stewardship business.
- The Land Trust Alliance, a coalition of national land trusts, recognizes the value and importance of such partnerships and says that land trusts have the stewardship expertise, plus deep respect and credibility in local communities to make these deals work.
- During this presentation, EPA and the Trust for Public Lands will be sharing some successful examples of these partnerships and as part of the presentation materials we will be sharing another success story from the North American Land Trust who is eager to partner with companies and government on more projects.
- Sounds almost too good to be true - but it's not.

- Let's explore together the brilliant & profitable role that CEs can play in contaminated property redevelopment.
- Alex, want to tell us some more about land trusts and conservation easements?

# Land Trusts & Conservation Easements

## What is a Land Trust?

A private 501(c)3 non-profit organization formed to protect land within a particular geography.



# Land Trusts & Conservation Easements

- There are over 1,360 land trusts across the USA
- 56 million acres have been preserved by local, state, and national land trust (2015)
- 72% of these lands allow for public access
- \$2.18 billion = endowment amount held by land trusts nationally



## Land Trusts and Conservation Easements

What is a Conservation Easement?

A legal agreement (deed) that restricts certain uses on a property in order to conserve and/or restore particular property attributes

Alex (part of 8 min)



## Benefits of Conservation Easements

- Protect open space, species habitat, water resources, and working lands in perpetuity and can provide community amenities such as recreation, tourism or historic preservation
- Can decrease the landowner's property tax liability
- Can decrease the landowner's income tax liability
- Can provide landowners with a meaningful cash payment at closing

ALEX – 3 min

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- Can decrease the landowner's property tax liability
- Can decrease the landowner's income tax liability
- Can decrease the landowner's environmental liability (not true for Superfund so maybe remove?)
- Can provide landowners with a meaningful cash payment at closing





Alex





= One Property Right

Alex

# Land Trusts and Conservation Easements

## Examples of property rights:

- Mineral rights
- Developments rights
- Water rights
- Access rights
- Air rights

# Land Trusts & Conservation Easements

## Examples of Conservation Easement Restricted Uses

- Certain types of development
- Subdivision
- Timber harvesting, water usage, certain crops, etc.

## Examples of Conservation Easement Permitted Uses

- Agriculture and the development of Ag-related infrastructure
- Ranching
- Timber harvesting

# Land Trusts and Conservation Easements

## Baseline Reports and Conservation Easement Monitoring



# Redevelopment Strategies: Benefits of Conservation Easements



BILL – 2 min

- Simultaneously with the explosion of land trusts and use of conservation easements: In the early 2000's, changes in federal and state liability laws resulted in a dramatic increase in the redevelopment of contaminated properties, both Brownfield and Superfund sites.
- Specifically, the 2002 Brownfield Amendments and subsequent 2018 BUILD Act amendments to the federal Superfund law provided liability protections and exemptions to certain owners and holders of possessory interests in property.
- Perfect storm of opportunity...let's talk about the nuts & bolts of the brilliant & profitable role/intersection that CEs can play in redevelopment of Superfund sites and other contaminated property.



# Benefits of Conservation Easements & Restrictive Covenants



A portion of the Brown's Battery Breaking Superfund site in Hamburg, Pennsylvania is encumbered with a conservation easement, which dictates that sole use of the land area in the southwestern portion of the site shall be for wildlife habitat.

BILL – 1 min

Financial benefits:

- Save time & \$ on cleanup!

Image: A portion of the Brown's Battery Breaking Superfund site is in Hamburg, Pennsylvania is a conservation easement, which dictates that sole use of the land area in the southwestern portion of the site shall be for wildlife habitat.

# Benefits of Conservation Easements

**Federal charitable donation tax deduction:** IRS Code section 170(h)(2) a qualified donation allows the donor to deduct up to the fair market value of the donation up to 50% of adjusted gross income for 15 years (farmers can deduct 100%)

**State tax deduction:** A dozen or so states provide some sort of state income tax incentive for the donation or discounted sale of conservation easements

**Property tax reduction:** Reduces specific use of property, and therefore reduces the value of the property. The diminution in value reduces annual property taxes

**Estate tax reduction:** IRS Code section 2031(c), provides an estate tax exclusion of up to 40% of the encumbered value of land capped at \$500,000

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ALEX – 2 min

Financial Benefits: (refer to LTA brochure that is part of the materials being distributed)

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**State tax deduction** - A dozen or so states provide some sort of state income tax incentive for the donation or discounted sale of conservation easements.

**Property tax reduction** - A conservation easement reduces specific use of property, and therefore reduces the value of the property. The diminution in value reduces annual property taxes

**Estate tax reduction** - For individuals, IRS Code section 2031(c), provides an estate tax exclusion of up to 40% of the encumbered value of land capped at \$500,000



# Benefits of Conservation Easements



In 2016, Croydon TCE Superfund site - the Heritage Conservancy took ownership of a former industrial property at the site, known locally as Croydon Woods.

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BILL – 2 min

Long term stewardship - companies not in this business

- ♠ Because companies are usually focused on their core business, having someone else take over property management, especially management of a conservation area, would likely be an attractive option.

Image: In 2016, Croydon TCE Superfund site - the Heritage Conservancy took ownership of a former industrial property at the site, known locally as Croydon Woods.

# Liability Protection & Managing Risks with Conservation Easements



KAT – 2 min

Encourages redev with owners wary of transferring property due to liability concerns - Many companies are reluctant to relinquish ownership either during or after cleanup because they lack confidence in future owners to comply with land use restrictions.

Mothballing

Land Trust Alliance advises that a holder of a conservation easement is much less likely to incur liability under CERCLA than the owner of property so long as the land trust does not conduct activities that “manage, direct, or conduct operations specifically related to pollution” that may make it subject to CERCLA liability as an “operator” (Land Trust Alliance, 2012).

# Case Studies:

## Martin-Marietta, Sodyeco, Inc. Superfund Site



Bill – 7 min total

Snapshot: The Martin-Marietta, Sodyeco, Inc. Superfund site is located about 10 miles west of Charlotte, North Carolina. The site was home to various chemical companies for many years, beginning in 1936. In 1982, EPA found contaminants in surface water and groundwater on site. EPA placed the site on the National Priorities List (NPL) in 1983. EPA's cleanup included capping and disposal of waste materials and soil as well as groundwater treatment. EPA removed the site from the NPL in February 2012; EPA's Resource Conservation and Recovery Act (RCRA) program has since managed the site. Forsite Development has started redevelopment efforts at the site. The developer is turning the area into ReVenture Park, a business park focused on energy efficiency, renewable energy and environmental technology. The project is home to a biomass combined heat-and-power project, an algae-to-fuel pilot plant, a fuels and lubricants distributor, a composite walls contractor, a composting operation, a manufacturer of formwork technology, a gypsum board producer, a building materials delivery company, and a 35-acre aquaculture project, among others. Environmental stewardship is also an integral part of the site's redevelopment. A 185-acre conservation area enhances the site's natural resources. Projects include wildlife habitat, stream restoration and a trail system connecting the regional Carolina Thread Trail across the site to the nearby U.S. National Whitewater Center.



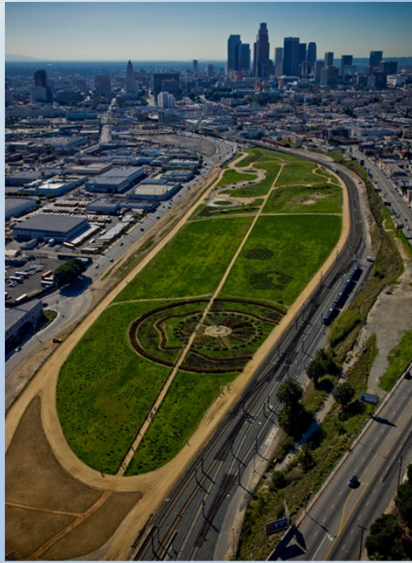
# Case Studies: Cornfields



THE  
TRUST  
**FOR**  
**PUBLIC**  
**LAND**

PAOLO – 7 min total

# Cornfields Project



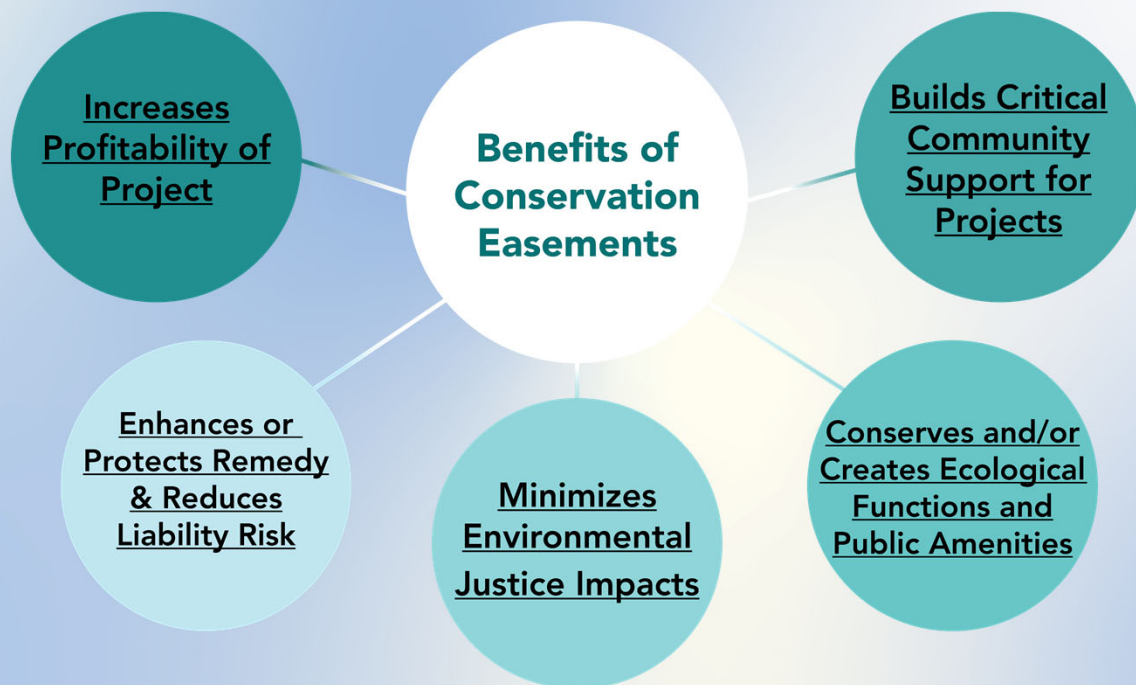
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PAOLO

# Take Aways & Lessons Learned

BiLL/Kat/TPL – 10 min total

# The Brilliant & Profitable Role of Conservation Easements in Redevelopment of Contaminated Property



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BILL – 2 min

## Takeways

- Conservation easements are brilliant & valuable tools in the redevelopment toolbox because they are often incorporated as part of an overall remedial strategy which can save time/\$, can make the deal more profitable, provide ecological/recreational benefits, help secure community support, minimize EJ impacts, and because liability concerns often discourage entities interested in conservation from taking ownership of contaminated property.
- In order to evaluate the frequency of use and effectiveness of land conservation tools in the redevelopment of contaminated properties, EPA redevelopment experts were polled. The results yielded numerous examples where land conservation tools played a critical role in the redevelopment of contaminated properties when communities wish to ensure land is preserved, as part of a long-term site cleanup management strategy, when developers need to extract value from a property to offset costs of a development project, and when liable parties wish to be good corporate citizens by permanently protecting land.
- EPA is committed to further facilitating public/private partnerships to encourage the redevelopment of Brownfields and Superfund sites by working with organizations like the Trust for Public Lands and the Land Trust Alliance.



# Lessons Learned

- 1) Be a good problem solver** - be willing to think outside the box and meet the needs of partners
- 2) Never underestimate the value of a great story** - maximize the win-wins: community & environmental benefits
- 3) Liability protection is achievable** for easement holders, but must be diligent
- 4) Be a good partner and creative in overcoming challenges:** allay fears of PRPs; identify willing easement holder with capacity; and factor in ongoing maintenance/monitoring costs.

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Bill/Kat/TPL - 6 min

- Need to think creatively (Bill)
- Value of a good story (Bill)
- Liability protection is achievable, however every site is unique so land trusts/local govt need to be diligent in customizing their liability protections to appropriately manage risk (kat)
- Be a good partner and creative in overcoming challenges: (Alex)
  - Many companies are reluctant to relinquish ownership either during or after cleanup because they lack confidence in future owners to comply with land use restrictions.
  - Identifying land trusts or local govt agencies able/willing to hold the easement
  - Need to factor in ongoing monitoring / maintenance costs for easements

# Tools, Support & Resources

Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch

BILL – 10 min total

Thank you to all the presenters for some fantastic presentations! It was interesting to hear about all the ways that conservation easements can facilitate reuse on Superfund sites.

Showcasing successful case studies is a very important part of Superfund Redevelopment's mission. Along with providing examples, we have found that sharing guidance, tools, lessons learned and resources is an impactful way to promote safe and beneficial reuse. So, another big thank you! to both of our presenters.

I would like to wrap up our time today by providing you with some resources and then we will use our remaining time for our question and answer session with roundtable discussion.

# Superfund Redevelopment Tools & Support

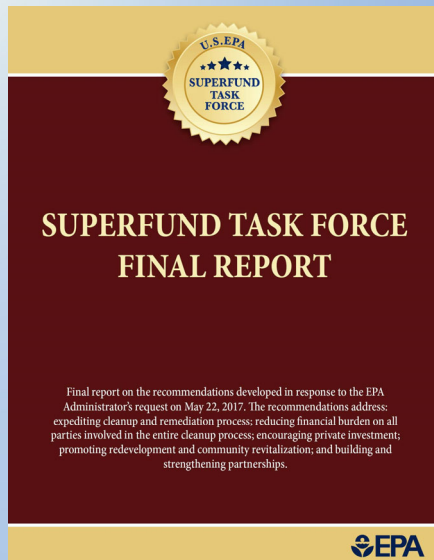
- Prospective Purchaser Inquiry (PPI) Tool
- “Top 10 Questions to Ask When Buying a Superfund Site”
- Superfund Redevelopment fact sheets
- Comfort Status Letters
- Ready for Reuse (RfR) Determinations
- EPA Guidance & Policies
- 2019 Common Elements Guidance
- 2019 Revitalization Handbook
- Superfund Task Force Report
- BFPP Work or Lien Settlement Agreements
- Prospective Purchaser Agreements (PPAs)
- Reuse Assessments
- Site specific fact sheets & Success Stories/Case Studies
- Regional Superfund Redevelopment Initiative Coordinators

## BILL

As I mentioned at the beginning of our time today, Superfund Redevelopment has a number of tools and resources available on our website to help as you consider reuse at your site.

The Superfund Redevelopment website is included as a link in the additional resources on the right side of your Adobe Connect screen.

# Superfund Task Force



Link to

Superfund Task Force Final Report:

[www.epa.gov/sites/production/files/2019-09/documents/sftfreport\\_v17-9-5\\_for508s.pdf](http://www.epa.gov/sites/production/files/2019-09/documents/sftfreport_v17-9-5_for508s.pdf)

## BILL

Link to Superfund Task Force Final Report:

[www.epa.gov/sites/production/files/2019-09/documents/sftfreport\\_v17-9-5\\_for508s.pdf](http://www.epa.gov/sites/production/files/2019-09/documents/sftfreport_v17-9-5_for508s.pdf)

# Regional Superfund Redevelopment Coordinators

[www.epa.gov/superfund-redevelopment-initiative/regional-redevelopment-contacts](http://www.epa.gov/superfund-redevelopment-initiative/regional-redevelopment-contacts)

Region	Name	Phone	Email
1	Joe LeMay	617-918-1323	<a href="mailto:lemay.joe@epa.gov">lemay.joe@epa.gov</a>
2	Jaclyn Kondrk	212-637-4317	<a href="mailto:kondrk.jaclyn@epa.gov">kondrk.jaclyn@epa.gov</a>
3	Chris Thomas	215-814-5555	<a href="mailto:thomas.christopher@epa.gov">thomas.christopher@epa.gov</a>
4	Shelby Johnston	404-562-8287	<a href="mailto:johnston.shelby@epa.gov">johnston.shelby@epa.gov</a>
	Scott Miller	404-562-9120	<a href="mailto:miller.scott@epa.gov">miller.scott@epa.gov</a>
	Joydeb Majumder	404-562-9121	<a href="mailto:majumder.joydeb@epa.gov">majumder.joydeb@epa.gov</a>
5	Thomas Bloom	312-886-1967	<a href="mailto:bloom.thomas@epa.gov">bloom.thomas@epa.gov</a>
6	Casey Luckett Snyder	214-665-7393	<a href="mailto:luckett.casey@epa.gov">luckett.casey@epa.gov</a>
7	Tonya Howell	913-551-7589	<a href="mailto:howell.tonya@epa.gov">howell.tonya@epa.gov</a>
8	Fran Costanzi	303-312-6571	<a href="mailto:costanzi.frances@epa.gov">costanzi.frances@epa.gov</a>
9	Grace Ma	415-947-4212	<a href="mailto:ma.grace@epa.gov">ma.grace@epa.gov</a>
10	Kira Lynch	206-553-2144	<a href="mailto:lynch.kira@epa.gov">lynch.kira@epa.gov</a>

## BILL

Superfund Redevelopment also has at least one redevelopment coordinator in each region to support reuse at the site-specific level. If you'd like more information about an existing reuse project, or would like to discuss reuse opportunities at a site near you, please feel free to reach out to your Regional Coordinator.

# For More Information:

Frank Avvisato

Superfund Redevelopment Initiative Project Manager

(703) 603-8949

[Avvisato.Frank@epa.gov](mailto:Avvisato.Frank@epa.gov)

Superfund Redevelopment website:

[www.epa.gov/superfund-redevelopment-initiative](http://www.epa.gov/superfund-redevelopment-initiative)

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BILL

If you have any general questions or would like more information about Superfund Redevelopment, please don't hesitate to contact Frank Avvisato, who is the Project Manager for Superfund Redevelopment at EPA.

Now, we are going to switch the screen view to the survey screen. During our question and answer session with roundtable discussion, please take a minute to provide feedback in response to the five questions posed. Also, please add your email address at the bottom right if you would like to be on our notification list for future webinars.

***[Make sure survey screen is now showing, ask Jean if needed. As participants provide responses, move into Q&A.]***

*Extended Q&A session for remaining questions*

Thank you all for your questions and for joining us today. And thanks again to our presenters!